Brightvite Sdn Bhd v Pantai Towers Management Corp and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS W-02(NCVC)(A)-433–03 OF 2016 AND W-02(NCVC)(A)-434–03 OF 2016

HAMID SULTAN, NALLINI PATHMANATHAN AND BADARIAH SAHAMID JJCA

11 JUNE 2018

Land Law — Strata title — Management fees — Claim for arrears of management fees that had accrued prior to acquisition of condominium units — Whether appellants only liable for management fees levied and unpaid after they had acquired their respective units — Strata Titles Act 1985 ss 45(5) & (6)

Pantai Towers Management Corp ('the plaintiff') was established as the management corporation of Pantai Towers which comprised a block of 56 condominium units. Originally, Metroplex Bhd ('Metroplex') owned a total of condominium units. Prior to the winding up of Metroplex, Brightvite Sdn Bhd ('Brightvite') acquired five of the condominium units but this was unknown to the plaintiff. The plaintiff came to realise this for the first time at the creditors' meeting when they were informed by Metroplex's liquidator. In 2013, the remaining 25 units owned by Metroplex were sold to Benchmark Link Sdn Bhd ('Benchmark'), as approved by an order of the High Court. The plaintiff claimed against Brightvite and Metroplex for a total sum of RM1,080,95.16 being the apportioned maintenance charges owed to it from October 2008–December 2008. Both Brightvite and Benchmark were of the opinion that they were not liable for management fees until they took possession of the units. The plaintiff initiated claims from both Brightvite and Benchmark. The High Court held in favour of the plaintiff, ruling that Brightvite and Benchmark were liable for the full management fees due and owing. This sum included arrears of management fees that had accrued due prior to their acquisition of five and 30 condominium units respectively from Metroplex. In other words, a portion of the debt claimed by the plaintiff included management fees incurred during the time Metroplex was the owner of the condominium units. Hence, the present appeals against the decision by Brightvite and Benchmark on the ground that they were only liable for management fees levies and unpaid after they had acquired their respective units.

Held, dismissing the appeals with costs of RM20,000 subject to allocatur:

(1) Benchmark and Brightvite did not seek any clarification or certificate as prospective purchasers. They only sought to raise this issue in court in response to the claim by the management corporation. The High Court judge did not err when Her Lordship concluded that the allegation of failing to levy contributions in proportion to the share units was not bona fide and very much an afterthought. There was no basis for appellate intervention (see para 25).

(2) Section 45(5) and (6) of the Strata Titles Act 1985 ('the Act') are crystal clear. A debt in respect of management fees are separately recoverable as debts from either the proprietor or its successor in title. In this context, sub-s (6) clearly provides that a 'purchaser to be duly registered as a proprietor' is to be considered a 'proprietor' for the purpose of recovery of such a debt. In this case, Brightvite and Benchmark are liable for the debts, notwithstanding that Metroplex was the registered proprietor for some or most of the period in respect of which the debt arose. Such statutory provision is express and could not be ignored. It would be perverse to adopt the construction proposed by the appellants given the clear and unambiguous words utilised (see paras 34–35).

(3) The filing of the claim vide proof of debt form did not preclude the plaintiff from seeking recovery against the Benchmark and Brightvite particularly when the debt remained unpaid to date vis a vis Metroplex. The claim was still subject to verification and confirmation. The filing of the proof of debt form against Metroplex did not operate as an estoppel against recovery of the debt from the appellants in light of the express statutory provisions of s 45(5) and (6) of the Act (see para 43).

[Bahasa Malaysia summary

Perbadanan Pengurusan Pantai Towers ('plaintif') ditubuhkan sebagai perbadanan pengurusan Pantai Towers yang terdiri daripada blok 56 unit kondominium. Pada asalnya, Metroplex Bhd ('Metroplex') memiliki sejumlah unit kondominium. Sebelum penggulungan Metroplex, Brightvite Sdn Bhd ('Brightvite') memperoleh lima unit kondominium tetapi ini tidak diketahui oleh plaintif. Plaintif menyedari ini, buat kali pertamanya, semasa mesyuarat pemiutang apabila mereka dimaklumkan oleh pelikuidasi Metroplex. Pada tahun 2013, baki 25 unit milik Metroplex telah dijual kepada Benchmark Link Sdn Bhd ('Benchmark'), berikutan kelulusan oleh perintah Mahkamah Tinggi. Plaintif menuntut terhadap Brightvite dan Metroplex untuk jumlah keseluruhan sebanyak RM1,080,95.16 iaitu caj penyelenggaraan yang terhutang padanya dari Oktober 2008–Disember 2008. Kedua-dua Brightvite dan Benchmark berpendapat bahawa mereka tidak bertanggungan terhadap yuran pengurusan sehingga mereka mengambil alih unit tersebut. Plaintif memulakan tuntutan terhadap kedua-dua Brightvite dan Benchmark. Mahkamah Tinggi, memihak pada plaintif, memerintahkan agar Brightvite dan Benchmark bertanggungjawab atas yuran pengurusan penuh yang perlu

dibayar dan terhutang. Jumlah ini termasuk tunggakan yuran pengurusan yang telah terakru sebelum pengambilalihan, masing-masing, lima dan 30 unit kondominium daripada Metroplex. Dalam erti kata lain, sebahagian daripada hutang yang dituntut oleh plaintif termasuk yuran pengurusan yang ditanggung semasa Metroplex adalah pemilik unit kondominium. Oleh itu, rayuan ini terhadap keputusan tersebut oleh Brightvite dan Benchmark atas alasan mereka hanya bertanggungan terhadap levi yuran pengurusan dan tidak berbayar selepas mereka membeli unit masing-masing.

Diputuskan, menolak rayuan:

(1) Benchmark dan Brightvite tidak mendapatkan sebarang penjelasan atau sijil sebagai bakal pembeli. Mereka hanya membangkitkan isu ini di mahkamah sebagai balasan terhadap tuntutan oleh perbadanan pengurusan. Hakim Mahkamah Tinggi tidak terkhilaf apabila beliau menyimpulkan bahawa dakwaan gagal melevikan sumbangan secara seimbang kepada unit-unit saham tidak suci hati dan satu fikiran semula. Tiada asas untuk campur tangan rayuan (lihat perenggan 25).

(2) Seksyen 45(5) dan (6) Akta Hakmilik Strata 1985 ('Akta') adalah jelas. Hutang berhubung yuran pengurusan boleh diperolehi secara berasingan sebagai hutang daripada, sama ada pemilik atau pengganti hak miliknya. Dalam konteks ini, sub-s (6) dengan jelas memperuntukkan bahawa 'pembeli yang didaftarkan sewajarnya sebagai pemilik' dianggap sebagai 'pemilik' untuk tujuan pemerolehan hutang tersebut. Dalam kes ini, Brightvite dan Benchmark bertanggungjawab terhadap hutang tersebut, walaupun Metroplex adalah pemilik berdaftar untuk sebahagian atau sebahagian besar tempoh berkenaan hutang tersebut timbul. Peruntukan undang-undang adalah nyata dan tidak boleh diabaikan. Adalah bertentangan untuk mengguna pakai huraian yang dicadangkan oleh perayu-perayu memandangkan perkataan-perkataan yang digunakan jelas tidak kabur (lihat perenggan 34–35).

(3) Pemfailan keterangan tuntutan tentang bentuk hutang tidak menghalang plaintif daripada menuntut terhadap Benchmark dan Brightvite terutamanya apabila hutang itu masih belum berbayar sehingga kini kepada Metroplex. Tuntutan tersebut masih tertakluk pada pengesahan. Pengemukaan keterangan bentuk hutang terhadap Metroplex tidak beroperasi sebagai estoppel terhadap pemerolehan hutang daripada perayu berdasarkan peruntukan undang-undang yang jelas dalam s 45(5) dan (6) Akta (lihat perenggan 43).]

Notes

For cases on strata title in general, see 8(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5595–5713.

Cases referred to

Andrew Loh & Anor v Management Corporation Strata Title No 082 [1987] 1 MLJ 102 (folld)

De Tropicana Management Corporation v South Malaysia Industries Bhd [2014] 1 LNS 364, HC (refd)

Singapore Developments (Pte) Ltd v Management Corporation Strata Title No 446 [1991] 2 SLR (R) 733, CA (refd)

Sri Wangsaria Management Corporation v Yeap Swee Oo @ Yeap Guan Cheng & Anor [2009] MLJU 1461, HC (folld)

Legislation referred to

Strata Titles Act 1985 ss 34(7), 39, 41A, 45(3), (4), (4)(c), (4)(d), (4)(e), (4)(f), (5), (6), (6)(b), 55A

Appeal from: Originating Summons No 24NCVC-1733–11 of 2014 (High Court, Kuala Lumpur)

Cecil Abraham (Malcolm Fenandez, Rishwant Singh and Mark Cheng with him) (C Sukumaran & Co) for the appellant.

Cyrus Das (Peter Sklechy, Claudia Nah, T Naraendran and K Kamales with him) (Cheah Teh & Su) for the respondent.

Nallini Pathmanathan JCA:

INTRODUCTION

[1] These two appeals arise from the decision of the High Court dated 29 January 2016 allowing the claim brought by the plaintiff, Pantai Towers Management Corp ('the management corporation') and the respondent here, against the two defendants, namely Brightvite Sdn Bhd, the first defendant ('Brightvite') who is the appellant in Appeal No 433 and Benchmark Link Sdn Bhd, the second defendant who is the appellant in Appeal No 434.

[2] The management corporation's claim vide originating summons against Brightvite and Benchmark (in each of the appeals) is for service charges, maintenance fees, quit rent, insurance premium payment and water charges ('management fees') in respect of condominium units purchased by the appellants from the previous owner, one Metroplex Bhd (in liquidation) ('Metroplex'). The two appeals, namely 433 and 434 were heard together.

[3] The learned High Court judge determined the matter in favour of the management corporation ruling that Brightvite and Benchmark were liable for the full management fees due and owing. This sum included arrears of management fees that had accrued due prior to their acquisition of five and

30 condominium units respectively from Metroplex. In other words, a portion of the debt claimed by the plaintiff included management fees incurred during the time when Metroplex was the owner of the condominium units. The basis for such claim includes, inter alia, s 45(3) and (5) of the Strata Titles Act 1985 ('the Act'). Brightvite and Benchmark appealed against the decision maintaining that they were only liable for management fees levied and unpaid after they had acquired their respective units.

SALIENT FACTS

[4] The management corporation, the plaintiff, was established as the management corporation of Pantai Towers on 15 March 2005 by virtue of s 39 of the Act. It comprises a block of 56 condominium units. Originally Metroplex owned a total of 30 condominium units. It incurred management fees owing to the management corporation for the period from October 2007 to September 2008 in respect of those 30 units. On 27 August 2008, the management corporation filed a suit against Metroplex to claim the sum of RM159,146.23 being the outstanding management fees then due and owing. The management corporation obtained judgment against Metroplex on 9 October 2009. However, well before that, on 1 August 2008, Metroplex had been wound up and a liquidator appointed. The management corporation therefore filed a proof of debt form on 7 December 2012 for a sum of RM931,786.39. This comprised the management fees outstanding for the entire 30 units for the period from October 2007 until September 2012 inclusive of the judgment debt. These fees remain unpaid to date. The proof of debt form remains unadmitted and unpaid.

[5] Prior to the winding up of Metroplex, Brightvite acquired five of the condominium units, although the sale was finally only concluded on 25 August 2012. This was unknown to the management corporation. The latter only realised this for the first time at the first creditors' meeting held on 3 January 2013 when they were so informed by the liquidator of Metroplex.

[6] On 14 April 2013 the remaining 25 units owned by Metroplex were sold to Benchmark as approved by an order of the High Court dated 15 May 2013. The majority shareholder of Benchmark is Madam Lim Siew Kim who was at all material times a director of Metroplex.

[7] The claim by the management corporation against Brightvite and Metroplex was for a total sum of RM1,080,95.16 being the apportioned maintenance charges owed to it from October 2008–December 2014. This is to be contrasted with the management corporation's claim against Metroplex which was for the period from October 2007–September 2008.

[8] The breakdown of the amount owing is as follows:

(a) Brightvite — RM345,894.55; and

(b) Benchmark — RM762,974.97.

[9] Neither entity sought to enquire of the management corporation whether there were any outstanding management charges owing in respect of their properties pursuant to s 45(4) of the Act, prior to their acquisition of the condominium units.

[10] On 2 July 2014, Metroplex wrote to the management corporation enclosing a cheque for the sum of RM99,518.17 forwarded by Brightvite as payment towards its portion of the outstanding management fees from June–August 2014. Brightvite took the position that it only owed management fees to the management corporation from the date when the sale of the five units was concluded. The management corporation rejected the cheque maintaining that Brightvite was responsible for the entirety of the sum due and owing by Metroplex and not just from the date the sale was concluded.

[11] Benchmark which acquired its 25 units pursuant to a court sanctioned sale, could not take possession of the units as it was denied entry by the management corporation. Metroplex, through its solicitors, by letter dated 18 November 2011 confirmed that it would bear all management fees for Benchmark's units until vacant possession was given to Benchmark. Notwithstanding this the management corporation continued to demand the arrears of management fees for the period from October 2008–April 2014 from Benchmark.

[12] Akin to Brightvite, Benchmark also took the position that it was not liable for management fees until it took vacant possession of the units.

[13] The management corporation then initiated claims from both Brightvite and Benchmark for the total sums stated in the PODF excluding the judgment fees together with management fees from October 2012–December 2014.

THE DECISION OF THE HIGH COURT

[14] The comprehensive judgment, crafted in Her Ladyship Dato' Rosnaini bt Saub's inimitable style, describes the core issue accurately as relating to the question of whether Brightvite and Benchmark are responsible for, or liable to pay, the outstanding management fees for their respective units prior to their acquisition of those units from Metroplex.

[15] One of the issues raised at what appears to be a late stage was that the plaintiff had not levied the management fees in accordance with, or in proportion to the share units. Her Ladyship found that there was 'absolutely no evidence' to establish this contention. If there had been such a dispute then this should have been made known in writing to the management corporation well before the issuance of the writ. This would have accorded with s 45(4) of the Act which provides for inquiries about any levy contribution due and owing in respect of their units. The management corporation would then have had to issue a certificate detailing the accounts and substantiating the sum claimed. There was no attempt to do so by Brightvite or Benchmark.

[16] The core issue she held, was their refusal to pay outstanding management fees prior to their becoming proprietors of the subject units. Prior to this they maintained that Metroplex was liable.

[17] On this issue the learned judge held that Brightvite and Benchmark were the successors in title to the respective units. s 45(5) of the Act allowed the management corporation to recover outstanding contributions levied under s 45(3) of the Act either from the proprietor or successor in title. More specifically the learned judge found that both Brightvite and Benchmark fell within the purview of s 45(6)(b) of the Act and were therefore liable for the sums claimed.

[18] Finally Her Ladyship held that there was no confusion as to the period of time for which the management fees were due and owing. The management corporation's claim is for the period from October 2008–December 2014. Its claim in the Sessions Court against Metroplex was for the period from October 2007–September 2008. There was therefore no question of any form of overlapping claim as alleged by Benchmark and Brightvite.

[19] The proof of debt form did not comprise any basis for a claim of estoppel against the management corporation. This, Her Ladyship held, was because the plaintiff was unaware of the sale of the units by Metroplex to the defendants. Moreover the quantum claimed under the proof of debt form remained unpaid.

[20] On the issue of limitation the learned judge held that the accounts relating to management fees were running accounts (see *Sri Wangsaria Management Corporation*). As such limitation did not come into play.

[21] All other issues raised were found by the learned judge to be irrelevant, particularly as the position in law is clear.

A THE CONTENTIONS OF PARTIES, OUR ANALYSIS AND DECISION

[22] Section 45 deals with the management fund. It provides as follows:

45(1) The management corporation shall establish a management fund sufficient in the opinion of the management corporation to meet the administrative expenses as may be incurred for the purposes of controlling, managing and administering the common property, paying rent, rates and premiums of insurance and discharging any other obligation of the management corporation.

45(2) ...

[23] Section 45(3) provides, inter alia, that for the purposes of establishing and maintaining the management fund the management corporation at general meeting raise the amounts by levying contributions on the proprietors in proportion to the share units:

45(3) Subject to section 41A, for the purpose of establishing and maintaining the management fund the management corporation may at a general meeting:

(a) determine from time to time the amount to be raised for the purposes mentioned in subsection (1);

(b) raise the amounts so determined by levying contributions on the proprietors in proportion to the share units or provisional share units of their respective parcels or provisional blocks; and

(c) determine the amount of interest payable by a proprietor in respect of late contributions which shall not exceed the rate of ten per cent per annum.

[24] Section 45(4) allows for an application on behalf of a proprietor of a parcel or by a prospective purchaser of a parcel offered for sale of the quantum payable whereupon the management corporation is to issue to that person a certificate certifying the amount determined pursuant to the amounts set or agreed upon at general meeting, as being the contributions required of the proprietor. It also stipulates the time and manner of payment of the amount determined and other matters as specified in (c)–(f) of sub-s (4). Such a certificate issued by the management corporation is stipulated to amount to conclusive evidence of the matters sought therein:

45(4) On application by or on behalf of a person who is a proprietor of a parcel, or by or on behalf of a prospective purchaser of a parcel that is offered for sale, or by or on behalf of the chargee or prospective chargee of a parcel, the management corporation shall issue to that person a certificate certifying —

(a) the amount determined, pursuant to subsection (3), as the contributions of that proprietor;

(b) the time and manner of payment of the amount determined by it pursuant to that subsection;

(c) the extent, if any, to which the contribution has been paid;

(d) the amount (if any) then recoverable by the management corporation in respect of the parcel pursuant to subsection 43(5);

(e) the sum standing to the credit of the management fund and the amount out of that fund committed or reserved for any expenses already incurred by the management corporation; and

(f) whether or not the management corporation has incurred any expenditure or is about to perform any repairs, work or act in respect of which a liability is likely to be incurred by the proprietor of the parcel under any provision of this Part and, if so, the estimated amount of the expenditure or the general nature of the repairs, work or act, and as against the management corporation and in favour of any person (including the member) relying in good faith on such certificate that certificate shall be conclusive evidence of the matters certified herein.

(5) Any contribution levied under subsection (3) in respect of a parcel shall be due and payable on the passing of a resolution to that effect by the management corporation and in accordance with the terms of that resolution, and may be recovered as a debt from a proprietor of, or his successor in title to, the parcel.

Section 45(5A) ...

Section 45(6) For the purposes of subsection (5) the word 'proprietor' shall include the person for the time being receiving the rent of the parcel, whether as agent or trustee or as receiver, and who would receive the same if the parcel were let to a tenant.

[25] It is not in dispute that neither Benchmark nor Brightvite sought any such clarification or certificate as prospective purchasers. They only sought to raise this issue in court in response to the claim by the management corporation. That must beg the question why they failed to do so. The learned judge did not therefore err when she concluded that this allegation of failing to levy contributions in proportion to the share units was not bona fide and very much an afterthought. She cannot be said to be plainly wrong in her conclusion and there is accordingly no basis for appellate intervention. With respect, we concur with her decision on this point.

[26] It was submitted for the appellants that the learned judge erred when she held that there had been no request for a statement of account because Metroplex had sought such a statement of account from the management corporation on 11 April 2014 but to no avail. However the learned judge was referring to a query from Brightvite or Benchmark and not Metroplex, which is not a party to the present appeals. That query can have no bearing on Brightvite or Benchmark and certainly does not afford a defence as to their late or last minute contention that the maintenance charges are not in accordance with the share units.

A **[27]** The crux of the defence however relates to s 45(5) and (6). Section 45(5) provides that any contribution levied in accordance with s 45(3), namely in proportion to the share unit/s, becomes due and payable on the passing of a resolution to that effect by the management corporation and may be recovered as a debt from:

B
(a) a proprietor; or

(b) his successor in title to the parcel/s.

C Subsection 6 provides that the word 'proprietor' includes:

(a) the person for the time being receiving the rent of the parcel, whether as an agent or a trustee or a receiver, and who would receive the same if the parcel were let to a tenant; or

(b) a purchaser to be duly registered as a proprietor.

D

[28] Therefore both a registered proprietor of a unit as well as any purchaser who is to be duly registered as a proprietor may be held liable for a debt arising as a consequence of a failure to pay management fees due and owing.

E

[29] It was contended for Brightvite and Benchmark that sub-s 6, by referring to both the proprietor and his successor in title, enables the management corporation to claim the proprietor's contribution from the proprietor and the contribution separately due from the successor in title from the latter. It did not, it was maintained impose an obligation on the successor F in title to pay the debts of the proprietor.

[30] A perusal of the section warrants the construction that the sum due and owing may be recovered as a debt from a proprietor of the subject parcel or the G successor in title to the proprietor of the subject parcel.

[31] In other words the section envisages that the debt may be recovered from two 'parties' as it were, namely the existing proprietor or the proprietor's successor in title. But the section clearly refers to one and the same debt, that H debt being the sum outstanding as management fees. In other words, that single debt is recoverable from either the proprietor or the proprietor's successor in title. The section does not provide that the debt is divisible between the proprietor and the successor in title in accordance with the point at which acquisition took place. That is not a tenable construction to adopt in I view of the clear and unambiguous meaning of the subsection. We are not therefore persuaded by this argument.

[32] By way of a supplemental submission it was also contended for Brightvite and Benchmark that both entities were separate and disparate from

Metroplex. Section 41A, it was contended, envisaged contributions as being payable by a proprietor to the management corporation for the management and proper maintenance of common property and to keep the subject units in a state of good and serviceable repair. As it was Metroplex that had acquired or enjoyed the benefit of the 30 units at the material time, Brightvite and Benchmark could not be held liable because these entities did not, at the material times enjoy any maintenance in respect of the relevant condominium units. Reference was also made to s 55A which provides that where 'a proprietor' fails to pay the relevant contributions demanded he or it is guilty of an offence and liable on conviction to a fine. This too it was contended meant that only Metroplex could be liable or guilty of an offence.

[33] In summary it was the appellants' contention that they as purchasers of the units from Metroplex could not become liable for a service that was performed for the benefit of the earlier proprietor and which they had not had the benefit of.

[34] We did not have considerable difficulty in dismissing this argument. This is because the provisions of ss 45(5) and (6) are, as the learned judge described them, 'crystal clear'. As stated earlier, a perusal of the section shows that Parliament has expressly provided for a debt in respect of management fees for services rendered are separately recoverable as debts from either the proprietor or its successor in title. In this context, sub-s (6) clearly provides that a 'purchaser to be duly registered as a proprietor' is to be considered a 'proprietor' for the purposes of recovery of such a debt. Applied to the instant case it simply means that Brightvite and Benchmark are liable for the debts, notwithstanding that Metroplex was the registered proprietor for some or most of the period in respect of which the debt arose. Such statutory provision is express and cannot be ignored.

[35] It simply does not bear the construction that the appellants seek to have this court adopt. It would be perverse to adopt the construction proposed by the appellants given the clear and unambiguous words utilised. The section and relevant sub-sections can be read literally as this accords with the purpose of the section, namely to ensure that the management corporation recovers monies unpaid by proprietors or future proprietors of units, so as not to make all the other unit owners subsidise the debt incurred. This would amount to a considerable prejudice to the other unit owners. Therefore the burden has been statutorily placed on impending purchasers.

[36] To ensure that they are safeguarded the earlier s 45(3) allows for a certification from the management corporation as to the specific sum due and owing and recoverable as a debt. This allows any prospective purchaser to make the relevant enquiries before deciding to make the purchase. It enables the

prospective purchaser to be cognisant of the total debt, if any, outstanding as being a further quantum to be considered in negotiating and finalising the purchase price.

[37] In the instant case, at least one of the entities, Benchmark ought to have been cognisant of this debt, as its majority shareholder holding 998 out of 1,000 shares, Madam Lim Siew Kim was at all material times a director of Metroplex.

[38] Our reasoning is further bolstered by the decision of the High Court in *Sri Wangsaria Management Corporation v Yeap Swee Oo @ Yeap Guan Cheng & Anor* [2009] MLJU 1461. Here too the subsequent purchasers refused to pay arrears of maintenance charges for the period prior to vacant possession, denying all liability for such arrears. The learned judge in that case held as follows:

> ... [18] Section 45(5) allows the plaintiff to recover outstanding contributions levied under section 45(3) from either a proprietor or his successor-in-title. In my opinion section 45(5) allows the plaintiff to recover from a proprietor, or in the event that the proprietor is no longer a proprietor as defined under s 4, then the plaintiff may recover the outstanding contributions from the successor in title. By s 45(6) the plaintiff may even recover outstanding contributions from 'a purchaser to be duly registered as a proprietor' ie persons who are not 'proprietors' within the meaning under s 4. To my mind, these provisions show the intention of the legislature that neither a proprietor nor a successor in title nor that category of 'proprietor' under s 45(6) may evade the obligation to pay contributions.

[39] This accords with our construction and reasoning above (see also *De Tropicana Management Corporation v South Malaysia Industries Bhd* [2014] 1 LNS 364 which also followed *Sri Wangsaria* and *Singapore Development*).

[40] We are also fortified in our reasoning by the Singapore cases of *Andrew Loh & Anor v Management Corporation Strata Title No 082* [1987] 1 MLJ 102 where their s 34(7) is in pari materia with our s 45(5) of the Act. In that case although the sale to the new owners was completed on a certain date and the transfer registered subsequently some seven months later, it was held that the new owners were subsidiary proprietors and liable to pay outstanding maintenance charges by virtue of a specific statutory provision in their Act.

[41] This position was also reiterated in the earlier Singapore Court of Appeal case of *Singapore Developments (Pte) Ltd v Management Corporation Strata Title No 446* [1991] 2 SLR (R) 733.

[42] For these reasons we are satisfied that the learned judge did not err in

law in her conclusions. Again there is no requirement for appellate intervention.

[43] It was also sought to be argued that the management corporation was dishonest in making a claim against Metroplex vide the filing of the proof of debt form and at the same time making claims from both Brightvite and Benchmark. To our minds the filing of the claim vide the proof of debt form does not preclude the MC from seeking recovery against the appellants particularly when the debt remains unpaid to date vis a vis Metroplex. In point of fact the liquidator has taken the position that the claim is still subject to verification and confirmation. The filing of the proof of debt form against Metroplex does not operate as an estoppel against recovery of the debt from the appellants in light of the express statutory provisions of s 45(5) and (6) of the Act.

[44] The issue of limitation was also raised by the appellants. However we would concur with the learned trial judge that the payment of management charges amounts to a running account such that limitation does not come into play.

[45] In all these circumstances we are satisfied that the learned judge did not err on the facts or in law in arriving at her decision in respect of both these appeals. There is no basis for appellate intervention. We therefore affirm the decision of the learned judge and dismiss both appeals with costs of RM20,000 subject to allocatur. The deposits are refunded.

Appeals dismissed with costs of RM20,000 subject to allocatur.

Reported by Afiq Mohamad Noor